

**Office of Chief Counsel
Internal Revenue Service
memorandum**

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to: Holly McCann
(Chief, Excise Tax Program)

from: Stephanie Bland
(Senior Technician Reviewer, CC:PSI:7)

subject: Electronic Signatures

This responds to your request, dated May 12, 2011, for non-taxpayer specific legal advice regarding the acceptability of digital signatures for excise tax purposes. This advice may not be used or cited as precedent.

BACKGROUND

The Manufactures and Retailers Excise Tax Regulations and other published guidance require certain people to provide certificates, statements or reports (collectively "certificates") in connection with various fuel transactions. See, e.g., Chapter 16 of IRS Publication 510. You have received inquiries as to whether the Internal Revenue Service (Service) requires certificates to be original with original signatures or whether electronic signatures, including scanned or faxed versions and versions with digital or electronic marks, are acceptable.

LAW AND ANALYSIS

There is nothing that legally prohibits the Service from accepting faxed, scanned, electronic, or digital signatures. Whether to accept signatures that are not original is a business decision for the Service. See I.R.C. § 6061(b) (authorizing the Service to develop procedures for the acceptance of signatures in digital or other electronic form) and Rev. Proc. 2005-39 (setting out circumstances where facsimile signatures may be used on certain forms). The Service may reject all documents that do not bear an original, ink signature; however, there is a hazard that a court may find sufficient evidence authenticating the document and reverse the Service's rejection of the

document. See Federal Rule of Evidence 901. Or, the Service may generally accept faxed, scanned, digital, and electronic signatures, and challenge authenticity only where there is some other evidence raising suspicion about the authenticity of a document. Then, at trial, the government may introduce such evidence to challenge authenticity. With regard to faxes from taxpayers to the Service, the Service has already adopted the following general policy, with various exceptions: if contact with the taxpayer has been made, and documented, the Service may accept faxed signatures of the taxpayer as legally sufficient. This policy decision is reflected IRM 21.3.4.14.5, *Use of FAX for Taxpayer Submissions*, as well as in a June 24, 2003, Memorandum from the Deputy Commissioner for Services and Enforcement to the division commissioners, the chief of criminal investigation, the chief of appeals, and the national taxpayer advocate, regarding the policy for use of fax and signature stamps in taxpayer submissions.

We further note that the certificates at issue here are not documents sent directly to the Service by the person providing the certificate, but rather are certificates given to a recipient for use in the recipient's tax return. A certificate generally allows a tax benefit to either the certificate provider or recipient. If the recipient knows the information in the certificate is false, the recipient may be jointly and severally liable for tax or subject to fines and criminal penalties for fraudulent use. Therefore, it is in the best interest of the recipient to ensure that the recipient can authenticate the certificate provider's signature. If the recipient is willing to accept an electronic signature as a matter of its own business decision, we recommend that the Service take that into consideration.

CONCLUSION

The Service may accept electronically signed certificates if it makes a business decision to do so.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

If you have any questions concerning this memorandum, please contact Charles J. Langley, Jr. at (202) 622-3130.